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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,293	09/14/2000	Catherine A. McCall	AL-2-C4	9793

26949 7590 07/02/2003

HESKA CORPORATION  
INTELLECTUAL PROPERTY DEPT.  
1613 PROSPECT PARKWAY  
FORT COLLINS, CO 80525

EXAMINER
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HUYNH, PHUONG N

ART UNIT	PAPER NUMBER
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1644

DATE MAILED: 07/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Art Unit: 1644

**DETAILED ACTION**

1. The location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1644, Group 1640, Technology Center 1600.
2. Claims 9-12, 14-17 and 19-24 are pending.
3. In view of the amendment filed 5/5/03, the restriction mailed 12/10/01 is hereby withdrawn and a new restriction is set forth below.

***Election/Restrictions***

4. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 9-12, 14-17, and 19, drawn to an isolated protein from *Dermatophagoides farinae* comprising the amino acid sequence selected from the group consisting of SEQ ID NO: 15, 18, 21 and fragment thereof (SEQ ID NO: 1, 3-7, 10-13), an isolated protein encoded by the nucleic acid molecule having a nucleic acid sequence selected from the group consisting of SEQ ID NO: 14, 17, 20, the complement thereof (SEQ ID NO: 16, 19, 22), a therapeutic composition comprising said proteins and a kit comprising said specific protein, classified in Class 530, subclass 350, Class 424, subclass 275.1, Class 435, subclass 810.
  - II. Claims 9-12, 14-17, and 19, drawn to an isolated protein from *Dermatophagoides pteronyssinus* comprising the amino acid sequence selected from the group consisting of SEQ ID NO: 35, 38, 41, an isolated protein encoded by the nucleic acid molecule having a nucleic acid sequence selected from the group consisting of SEQ ID NO: 34, 37, 40, the complement thereof (SEQ ID NO: 36, 39, 42), a therapeutic composition comprising said proteins and a kit comprising said specific protein, classified in Class 530, subclass 350, Class 424, subclass 275.1, Class 435, subclass 810.

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- III. Claims 20-21, drawn to a means to identify an animal susceptible to or having an allergic response to mice using a protein encoded by a specific nucleic acid from *Dermatophagoides farinae* wherein the protein comprising the amino acid sequence selected from the group consisting of SEQ ID NO: 15, 18, 21 and fragment thereof (SEQ ID NO: 1, 3-7, 10-13), an isolated protein encoded by the nucleic acid molecule having a nucleic acid sequence selected from the group consisting of SEQ ID NO: 14, 17, 20, the complement thereof (SEQ ID NO: 16, 19, 22), classified in Class 435, subclass 7.1.
- IV. Claims 20-21, drawn to a means to identify an animal susceptible to or having an allergic response to mice using a protein encoded by a specific nucleic acid from *Dermatophagoides pteronyssinus* wherein the protein comprising the amino acid sequence selected from the group consisting of SEQ ID NO: 35, 38, 41, an isolated protein encoded by the nucleic acid molecule having a nucleic acid sequence selected from the group consisting of SEQ ID NO: 34, 37, 40, the complement thereof (SEQ ID NO: 36, 39, 42), a therapeutic composition comprising said proteins and a kit comprising said specific protein, classified in Class 435, subclass 7.1.
- V. Claims 22-24, drawn to a method of treating an allergy in a subject susceptible to an anaphylactic allergic response by providing a composition comprising a specific mite allergic protein wherein the mite protein is from *Dermatophagoides farinae* comprising the amino acid sequence selected from the group consisting of SEQ ID NO: 15, 18, 21 and fragment thereof (SEQ ID NO: 1, 3-7, 10-13), an isolated protein encoded by the nucleic acid molecule having a nucleic acid sequence selected from the group consisting of SEQ ID NO: 14, 17, 20, the complement thereof (SEQ ID NO: 16, 19, 22), classified in Class 424, subclass 185.1.
- VI. Claims 22-24, drawn to a method of treating an allergy in a subject susceptible to an anaphylactic allergic response by providing a composition comprising a specific mite allergic protein wherein the mite protein is *Dermatophagoides pteronyssinus* comprising the amino acid sequence selected from the group consisting of SEQ ID NO: 35, 38, 41, an isolated protein encoded by the nucleic acid molecule having a nucleic acid sequence

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selected from the group consisting of SEQ ID NO: 34, 37, 40, the complement thereof (SEQ ID NO: 36, 39, 42), classified in Class 424, subclass 184.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions of Groups (I-II) and Groups (III-VI) are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the products as claimed can be used in materially different process such as making antibody. Therefore, they are patentably distinct.

Inventions of Groups II-VI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the method of identifying animal susceptible to allergic response to a specific allergen versus the method of treating allergy using the specific product as claimed differ with their respect to their process steps and endpoints. Therefore, they are patentably distinct.

Inventions of Groups I-II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the products as claimed differ with respect to amino acid structure and physiochemical properties. Therefore, they are patentably distinct.

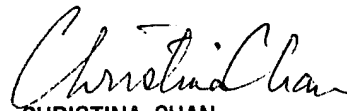
5. Because these inventions are distinct for the reasons given above and the searches are not co-extensive, restriction for examination purposes as indicated is proper.
6. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.
7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuong Huynh "NEON" whose telephone number is (703) 308-4844. The examiner can normally be reached Monday through Friday from 9:00 am to 5:30 p.m. A message may be left on the examiner's voice mail service. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Chan can be reached on (703) 308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist whose telephone number is (703) 308-0196.
9. Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM1 Fax Center telephone number is (703) 305-3014.

Phuong N. Huynh, Ph.D.  
Patent Examiner  
Technology Center 1600  
June 30, 2003

  
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